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DRAFT - January 30, 1996

**PHILIP MORRIS STATEMENT  
ON DISMISSAL OF INDUSTRY CHALLENGE TO FDA**

Today's court decision to dismiss claims brought by advertisers, thousands of retailers and five tobacco companies against the FDA's assertion of jurisdiction merely postpones the inevitable judicial review of the agency's illegal course of action.

Philip Morris does not want kids to smoke, and the company took action on its own last year to restrict youth access to cigarettes.

When the government announced on Aug. 10 that David A. Kessler and the FDA would regulate cigarettes and restrict adults' ability to receive advertising information about tobacco, the industry immediately filed a lawsuit so that this issue could be resolved sooner rather than later. Contrary to public statements by the administration and Commissioner Kessler, the FDA has told the court it is operating with "unequivocal open-mindedness" on the issue of whether it has any authority at all to regulate cigarettes.

The court took the government at its word and dismissed the case on the technical legal grounds that the case is not yet "ripe" for judicial review.

Today's decision is a victory only for those who seek delay judicial review of an illegal FDA decision.

Our Constitution rests on the principle that Congress makes the laws, the executive branch carries out those laws and the courts review the actions of the other two branches of government. The FDA, however, wants to ignore Congress, make its own law and shield itself from the scrutiny of a court. This it cannot do.

The FDA's regulatory action is in reality a first step toward an outright ban on the manufacture, sale and use of cigarettes.

Philip Morris calls on Commissioner Kessler to cease this illegal action by his agency and withdraw the proposed rule. As a public official, Commissioner Kessler must be responsive to the overwhelming public opposition to this rule as demonstrated by the outpouring of comments. In

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addition, Commissioner Kessler should be responsive to the substantial number of Senators and Congressmen who have voiced opposition to this action.

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